

Before the  
Federal Communications Commission  
Washington, DC 20554

<b>In the Matter of Acceleration of</b>	)	
<b>Broadband Deployment: Expanding the</b>	)	
<b>Reach and Reducing the Cost of</b>	)	<b>WC Docket No. 11-59</b>
<b>Broadband Deployment by Improving</b>	)	
<b>Policies Regarding Public Rights of Way</b>	)	
<b>and Wireless Facilities Siting</b>	)	

**CITY OF LAKE ELMO, MINNESOTA:**  
**REPLY COMMENTS ON THE FCC's BROADBAND AND RIGHTS OF WAY NOI**

Submitted: September 30, 2011

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**Summary of the City's Comments**

The City makes three main points in these Reply Comments: 1) The City has never acted as a barrier to broadband deployment at any time; 2) The Commission does not have jurisdiction to preempt local rights-of-way regulations; and 3) There is no evidence that local government regulation has negatively impacted broadband deployment in the state of Minnesota.

## **I. Introduction**

The City of Lake Elmo, Minnesota (the “City”) is located in Washington County about ten miles east of St. Paul, Minnesota with a population of 8,069.<sup>1</sup> The City is submitting these Reply Comments because it was wrongfully accused of acting as a barrier to broadband deployment. There is broadband competition from multiple broadband providers in the City, both wireline and wireless and there is no evidence showing the City acted as a barrier in any way. The City also agrees with other Commenters that the Commission is exceeding its jurisdiction in this matter and that there is no state or local law or regulation in Minnesota that acts as a barrier to broadband deployment.

## **II. The City has Never Acted as a Barrier to Broadband Deployment**

In the past three and a half years, the City has received and approved one request to install a wireless communications antenna on an existing structure. The City also received one request to construct a new communications tower, which was initially denied. Following a tower moratorium, the request was dropped, presumably because the company was sold to another wireless company and no longer needed the new tower. Since 2009, the City has had no new tower applications and approved the only request to upgrade equipment on an existing water tower. Today, the City is served by multiple wireless providers.<sup>2</sup>

Despite and contrary to these facts, the Wireless Infrastructure and the DAS Forum (“PCIA”), accused the City (albeit vaguely) as having “overly burdensome” application

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<sup>1</sup> See <http://www.lakeelmo.org/> (last visited Sept. 27, 2011)

<sup>2</sup> See *Cell Phone Service for Lake Elmo, MN 55042 (Washington County) Wireless Phone Service Providers*, <http://www.wirelessadvisor.com/zipcode-search/7n4n9b4N9a> (last viewed Sept. 27, 2011).

requirements. PCIA, however, provided nothing in support of this allegation except a newspaper article, which briefly described the City's cell tower ordinance adopted in 2009.<sup>3</sup> Clearly, PCIA did not properly investigate the City or the City's wireless ordinance. If it had, PCIA would have discovered that every viable wireless applicant was approved by the City and that the City has wireless competition from multiple providers. Only one applicant, which was subsequently sold and presumably did not need a new tower following the sale, was denied. If this is representative of PCIA's investigation of the list of cities cited on its Exhibit B, that entire Exhibit must be deemed unreliable. The City has not acted, and its ordinances do not act, as a barrier in any way to broadband deployment.<sup>4</sup>

### **III. The Commission Does Not Have Jurisdiction to Preempt Local Regulations.**

The City supports and adopts by reference the comments submitted by the National League of Cities *et al.* and the Coalition of Texas Cities concerning the Commission's limited or lack of jurisdiction concerning local rights-of-way regulations and compensation. This proceeding would appear to be a solution in search of a non-existent problem. Local government regulations and compensation have no negative impact on broadband deployment.

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<sup>3</sup> See *Comments of PCIA – The Wireless Infrastructure Association and the DAS Forum (A Membership Section of PCIA)*, Exhibit B (July 18, 2011).

<sup>4</sup> See Footnote 1; see also, *Density of Broadband Providers in the State of Minnesota Washington County Minnesota*, Connect Minnesota, [http://ftp.connectmn.org/CMNPublic/Connect\\_Minnesota\\_Mapping/County\\_Maps/County\\_ProviderDensity/MN\\_ProviderDensity\\_Washington.pdf](http://ftp.connectmn.org/CMNPublic/Connect_Minnesota_Mapping/County_Maps/County_ProviderDensity/MN_ProviderDensity_Washington.pdf) (Updated April 1, 2011); *Availability of Single or Multiple Broadband Technology Types*, Connect Minnesota, [http://ftp.connectmn.org/CMNPublic/Connect\\_Minnesota\\_Mapping/County\\_Maps/County\\_MultiSinglePlatform/MN\\_MultiSinglePlatform\\_Washington.pdf](http://ftp.connectmn.org/CMNPublic/Connect_Minnesota_Mapping/County_Maps/County_MultiSinglePlatform/MN_MultiSinglePlatform_Washington.pdf) (Updated April 1, 2011).

**IV. There is No Evidence that Local Government Regulation in Minnesota Negatively Impacts Broadband Deployment.**

The premise that local governments are hindering broadband deployment is without any foundation whatsoever. We are not aware of any broadband study in the state of Minnesota that has identified a single instance of a local government slowing or limiting broadband deployment.<sup>5</sup> The City generally supports the Comments of the League of Minnesota Cities, Suburban Rate Authority, and Minnesota Association of Cable and Telecommunications Administrators that concludes there is no barrier to broadband deployment in any state or local law or regulations in the state of Minnesota. To the contrary, broadband deployment is encouraged in Minnesota.

**V. Conclusion**

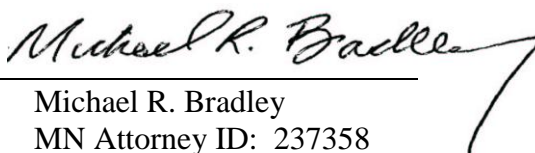
The City has never acted as a barrier to any broadband deployment and there are multiple broadband providers doing business in the City, both wireless and wireline. The City supports other organizations in opposing Commission jurisdiction to preempt local government rights-of-way regulations. Even if it did, there is no evidence that local government regulations in Minnesota are acting as any type of “barrier” to broadband deployment. To the contrary, broadband deployment is encouraged.

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<sup>5</sup> See Minnesota High Speed Broadband Task Force, Broadband Initiatives and Reports, <http://www.ultra-high-speed-mn.org/CM/Custom/Custom84.asp> (last visited Sept. 27, 2011).

Respectfully submitted,

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